

1120 [redacted] - August 29, 1981

5/6/81-91

DEC 11 1981 - requested letter

MAY 15 1981

Dear Applicant:

We have considered your application for exemption from Federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1954 and the information submitted in support thereof.

The information submitted indicates that you were incorporated on [redacted], under the laws of the State of [redacted]. Article Third of your Articles of Incorporation states that the purposes for which you were formed are, in part, "charitable, benevolent, eleemosynary, educational, civil, patriotic, social, literary, cultural, athletic, scientific, agricultural, horticultural, commercial, industrial, and any other specific purposes which encourage and maintain cultural development."

Your activities consist primarily of operating a former for profit movie theater where contemporary movies are presented to the public on a regular nightly basis. Admission fees are \$[redacted] per adult and \$[redacted] per child. Concessions are sold as an adjunct to the movie feature. To a lesser extent, you promote cultural or educational activities such as sponsoring performing arts shows and concerts. You are anticipating four cultural presentations this year. In addition, the theater is made available to groups or individuals for rental purposes.

Your revenue will be derived primarily from admission fees, donations, concession sales, and fundraising events. Your expenditures will be for capital purchases and renovation of the theater, film rental, salaries, concession purchases, advertising, and normal operating expenses such as utilities and office supplies.

Section 501(a) of the Internal Revenue Code of 1954 provides for the exemption of certain organizations described in subsection 501(c).

"(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involves the provision of athletic facilities or equipment), or for the

prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1 of the Income Tax Regulations relates to the definition of the organization and operation of organizations described in Section 501(c)(3). It reads, in part, as follows:

"In order to be exempt as an organization described in Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.--The term 'exempt purpose or purposes,' as used in this section, means any purpose or purposes specified in Section 501(c)(3)---."

"An organization is organized exclusively for one or more exempt purposes only if its articles of organization--limit the purposes of such organization to one or more exempt purposes."

"An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

Furthermore, the Regulations provide that an organization is not operated exclusively for an exempt purpose if its primary activity is carrying on an unrelated trade or business.

The operation of a movie theater on a regular basis which presents non educational, contemporary films to the public at customary admission fees is an activity normally carried on by commercial businesses. Therefore, we hold that your operation of the theater is not distinguishable from that of a commercial movie theater and constitutes the carrying on of a trade or business.

[REDACTED]

In Better Business Bureau of Washington, D.C., Inc. v. United States 326 U.S. 279 (1945), the Court held that for an organization to fall within the claimed exemption it must be devoted to an exempt purpose exclusively. The presence of a single, non exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

Since your primary activity is carrying on a trade or business, it is necessary to conclude you are not operated exclusively for one or more of the exempt purposes specified in Section 501(c)(3) of the Code.

In addition, your purposes as stated in your Articles of Incorporation, are broader than those specified in Section 501(c)(3) and there is no adequate provision for the distribution of your assets in the event of dissolution as required by Section 1.501(c)(3)-1(b)(4) of the Regulations. You therefore do not meet the first statutory test, that an organization be organized exclusively for one or more exempt purposes.

Based upon the information submitted, we have concluded that you do not qualify for exemption as an organization described in Section 501(c)(3) of the Internal Revenue Code.

You are required to file Federal income tax returns annually on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this proposed adverse determination letter, appeal to the Regional Office through this Key District Office. Your appeal should contain the information described under Regional Office Appeal in the enclosed Publication 892, and should be mailed to this office. The Regional Office will let you know what action they take and will set a date and place for any conference to be held.

Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

"A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies.

This is a determination letter.

Sincerely yours,

Signed [REDACTED]

District Director